



House of Representatives

File No. 726

General Assembly

January Session, 2017

(Reprint of File No. 70)

Substitute House Bill No. 6741
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 5, 2017

AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2017*):

3 In proceedings in the Superior Court under section 46b-129:

4 (1) The court may order the child, the parents, the guardian, or other
5 persons accused by a competent witness of abusing the child, to be
6 examined by one or more competent physicians, psychiatrists or
7 psychologists appointed by the court;

8 (2) (A) A child shall be represented by counsel knowledgeable about
9 representing such children who shall be assigned to represent the child
10 by the office of Chief Public Defender, or appointed by the court if
11 there is an immediate need for the appointment of counsel during a
12 court proceeding. If the child's parent or guardian has been accused by
13 a competent witness of abusing the child, or of causing the child to be

14 neglected or uncared for, upon the assignment or appointment of
15 counsel, such counsel shall be granted immediate access to (i) records
16 relating to the child, including, but not limited to, Department of Social
17 Services records and medical, mental health and substance abuse
18 treatment, law enforcement and educational records, without the
19 necessity of securing further releases, and (ii) the child, for the purpose
20 of consulting with the child privately. The court shall give the parties
21 prior notice of such assignment or appointment. Counsel for the child
22 shall act solely as attorney for the child.

23 (B) If a child requiring assignment of counsel in a proceeding under
24 section 46b-129 is represented by an attorney for a minor child in an
25 ongoing probate or family matter proceeding, the court may appoint
26 the attorney to represent the child in the proceeding under section 46b-
27 129, provided (i) such counsel is knowledgeable about representing
28 such children, and (ii) the court notifies the office of Chief Public
29 Defender of the appointment. Any child who is subject to an ongoing
30 probate or family matters proceeding who has been appointed a
31 guardian ad litem in such proceeding shall be assigned a separate
32 guardian ad litem in a proceeding under section 46b-129 if it is deemed
33 necessary pursuant to subparagraph (D) of this subdivision.

34 (C) The primary role of any counsel for the child shall be to
35 advocate for the child in accordance with the Rules of Professional
36 Conduct, except that if the child is incapable of expressing the child's
37 wishes to the child's counsel because of age or other incapacity, the
38 counsel for the child shall advocate for the best interests of the child.

39 (D) If the court, based on evidence before it, or counsel for the child,
40 determines that the child cannot adequately act in his or her own best
41 interests and the child's wishes, as determined by counsel, if followed,
42 could lead to substantial physical, financial or other harm to the child
43 unless protective action is taken, counsel may request and the court
44 may order that a separate guardian ad litem be assigned for the child,
45 in which case the court shall either appoint a guardian ad litem to
46 serve on a voluntary basis or notify the office of Chief Public Defender

47 who shall assign a separate guardian ad litem for the child. The
48 guardian ad litem shall perform an independent investigation of the
49 case and may present at any hearing information pertinent to the
50 court's determination of the best interests of the child. The guardian ad
51 litem shall be subject to cross-examination upon the request of
52 opposing counsel. The guardian ad litem is not required to be an
53 attorney-at-law but shall be knowledgeable about the needs and
54 protection of children and relevant court procedures. If a separate
55 guardian ad litem is assigned, the person previously serving as counsel
56 for the child shall continue to serve as counsel for the child and a
57 different person shall be assigned as guardian ad litem, unless the
58 court for good cause also determines that a different person should
59 serve as counsel for the child, in which case the court shall notify the
60 office of Chief Public Defender who shall assign a different person as
61 counsel for the child. No person who has served as both counsel and
62 guardian ad litem for a child shall thereafter serve solely as the child's
63 guardian ad litem.

64 (E) The counsel and guardian ad litem's fees, if any, shall be paid by
65 the office of Chief Public Defender unless the parents or guardian, or
66 the estate of the child, are able to pay, in which case the court shall
67 assess the rate the parent or guardian is able to pay and the office of
68 Chief Public Defender may seek reimbursement for the costs of
69 representation from the parents, guardian or estate of the child;

70 (3) The privilege against the disclosure of communications between
71 husband and wife shall be inapplicable and either may testify as to any
72 relevant matter; and

73 (4) Evidence that the child has been abused or has sustained a
74 nonaccidental injury shall constitute prima facie evidence that shall be
75 sufficient to support an adjudication that such child is uncared for or
76 neglected.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	46b-129a

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill grants specified access to counsel in certain cases of abuse and neglect and does not result in a fiscal impact to the state or municipalities.

House "A" narrows who may request records relating to the child involved in the case and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 6741 (as amended by House "A")******AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.*****SUMMARY**

This bill requires counsel in certain juvenile court proceedings, once appointed or assigned, to be granted immediate access to (1) certain records related to the child without securing further releases and (2) the child to consult with him or her privately.

Under the bill, counsel must be granted access if a competent witness has accused the child's parent or guardian of abusing the child or causing the child to be neglected or uncared for.

Under the bill, related records include (1) Department of Social Services records and (2) medical, mental health, substance abuse treatment, law enforcement, and educational records. By law, attorneys who represent children in juvenile court must automatically be granted access to the related court and Department of Children and Families records (CGS §§ 17a-28(g)(3) and 46b-124(b)).

*House Amendment "A" eliminates the bill's provision allowing any party to seek a court order granting access to the records and child, instead providing immediate access only to counsel.

EFFECTIVE DATE: October 1, 2017

COMMITTEE ACTION

Committee on Children

Joint Favorable Substitute

Yea 12 Nay 1 (03/02/2017)

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (04/25/2017)